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SEDUCTION AND THE RUSES OF POWER

by Saidiya Hartman

> I went to converse with Celia (defendant) at the request of several citizens. The object of my conversation was to ascertain whether she had any accomplices in the crime. This was eight or ten days after she had been put into the jail. I asked whether she thought she would be hung for what she had done. She said she thought she would be hung. I then had her to tell the whole matter. She said the old man (Newsome, the deceased) had been having sexual intercourse with her. That he had told her he was coming down to her cabin that night. She told him not to come and if he came she would hurt him. She then got a stick and put it in the corner. He came down that night. There was very little fire in the cabin that night. When she heard him coming she fixed the fire to make a little light. She said his face was towards her and he was standing talking to her when she struck him. He did not raise his hand when she went to strike the first blow but sunk down on a stool towards the floor. Threw his hands up as he sunk down . . . The stick with which she struck was about as large as the upper part of a . . . chair, but not so long . . . She said after she had killed him, the body laid a long time, she thought an hour. She did not know what to do with it. She said she would try to burn it.
>
> (*State of Missouri v. Celia*, 1885)[1]

In 19th-century common law, rape was defined as the forcible carnal knowledge of a female against her will and without her consent.[2] Yet the actual or attempted rape of an enslaved woman was an offense neither recognized nor legislated by law. Rape was not simply unimaginable because of purported black lasciviousness, but its repression was essential to the displacement of white culpability that characterized both the recognition of black humanity in slave law and the designation of the black subject as the originary locus of transgression and offense. The cases of *State of Missouri v. Celia* and *George v. State* averred that the enslaved, in general, and captive women, in particular, were not appropriate subjects of common law, and thus not protected against rape. The rape of enslaved women was not an offense in either common law or slave statute. However, the repression or effacement of rape can only in part be explained by the inapplicability of common law to the enslaved. Rather, the repression and negation of this act of violence is central, not only to the pained constitution of blackness, but to the figuration and the deployment of sexuality in the context of captivity. The disavowal of rape most obviously involves issues of consent,

agency, and will, which are ensnared in a larger dilemma concerning the construction of person and the calculation of black humanity in slave law.[3] Moreover, this repression of violence constitutes female gender as the locus of both unredressed and negligible injury.

The dual invocation of person and property made issues of consent, will and agency complicated and ungainly. Yet the law strived to contain the tensions generated by this seemingly contradictory invocation of the enslaved as property and person, as absolutely subject to the will of another and as actional subject, by recourse to the power of feelings: the mutual affection between master and slave, and the strength of weakness; the ability of the dominated to influence, if not control, the dominant. Just as the dual invocation of the slave as property and person was an effort to wed reciprocity and submission, intimacy and domination, the legitimacy of violence and the necessity of protection, so too the law's nullification of the captive's ability to give consent, or act as agent, and the punitive recognition and/or stipulation of agency as criminality reproduced the double bind of the bifurcated subject and intensified the burdened personhood of the chattel personal.

If the definition of the crime of rape relies upon the capacity to give consent or to exercise will, then how does one make legible the sexual violation of the enslaved, when that which would constitute evidence of intentionality, and thus evidence of the crime, the state of consent or willingness of the assailed, opens onto a Pandora's box in which the subject formation and object constitution of the enslaved female is no less ponderous than the crime itself. Or when the legal definition of the enslaved negates the very idea of "reasonable resistance?"[4] Or when violence is inextricable from enjoyment and the "blood-stained gate of slavery," a primal scene of sexual domination? Can the wanton and indiscriminate uses of the captive body be made sense of within the heteronormative framing of rape as female violation? If a crime can be said in fact to exist, or is at all fathomable within the scope of any normative understanding of rape, it perhaps can only be apprehended or discerned precisely as it is entangled with the construction of person in slave law, the differential production of gender and sexuality, and the punitive stipulation of agency as abasement, servility, and/or criminality.

What Thomas Jefferson termed the boisterous passions of slavery, the "unremitting despotism" of slaveowners and the "degrading submissions" of the enslaved, were curiously embraced, denied, inverted and displaced in the law of slavery (Jefferson 162). The boisterous passions bespoke the dilemma of enjoyment in a context in which joy and domination and use and violation could not be separated. As well, this language of passion bespeaks an essential confusion of force and feeling. The confusion between consent and coercion, feeling and submission, intimacy and domination, violence and reciprocity constitute what I term the discourse of seduction in slave law.[5] For the discourse of seduction obfuscates the primacy and extremity of violence in master-slave relations and in the construction of the slave as both property and person. To paraphrase John Forrester, seduction is a meditation on freedom and slavery, and will and subjection in the arena of sexuality. Seduction makes recourse to the idea of reciprocal and collusive relations and engenders a

precipitating construction of black female sexuality in which rape is unimaginable. As the enslaved female is legally unable to give consent or to offer resistance, she is presumed to be always willing.[6]

If the legal existence of the crime of rape depends upon evaluating the *mens rea* and *actus rea* of the perpetrator, and, more importantly, the consent or non-consent of the victim, then how does one grapple with issues of consent and will, when the negation or restricted recognition of these terms determine the meaning of enslavement?[7] If the commonplace understanding of "will" implies the power to control and determine our actions and identifies the expressive capacity of the self-possessed and intending subject, certainly this is far afield of the conditions and terms of action available to the enslaved. Yet the notion of the will connotes more than simply the capacity to act and do; rather it distinguishes the autonomous agent from the enslaved, encumbered and constrained. Furthermore, the extremity of power and the absolute submission required of the slave, not only renders suspect, or meaningless, concepts of consent and will, but the sheer lack of limitations regarding the violence "necessary" to the maintenance of slave relations, that is, black submission, unmoors the notion of "force." What limit must be exceeded in order that the violence directed at the black body be made legible in the law? In the case of slave women, the law's circumscribed recognition of consent and will occurred only in order to intensify and secure the subordination of the enslaved, repress the crime, and deny injury, for it asserted that the captive female was both will-less and always already willing. Moreover, the utter negation of the captive's will required to secure absolute submission was identified as *willful* submission to the master in the topsy turvy scenario of onerous passions. Within this scenario, the constraints of sentiment were no less severe than those of violence. The purportedly binding passions of master-slave relations were predicated upon the inability of the enslaved to exercise his/her will in any ways other than serving the master, and, in this respect, the enslaved existed only as an extension or embodiment of the owner's rights of property. To act outside the scope of willful submission was to defy the law. The surety of punishment awaited such transgressions.

I

In the *State of Missouri v. Celia, a slave*, Celia was prosecuted for the murder of her owner, Robert Newsome. The first time Newsome raped Celia was on the day he purchased her. He only stopped four years later when she killed him. Celia was found guilty by the court and sentenced to be hung. Although her attorney argued that the laws of Missouri concerning crimes of ravishment embraced slave women as well as white women and that Celia was acting to defend herself, this argument was rejected by the court. *Missouri v. Celia* raises critical questions about sexuality, agency, and subjectivity. Perhaps this is why the case was never reported or published. Certainly, the fact that this case was neglected for over one hundred and forty-five years because not cited in any legal index and abandoned in a file drawer at the Callaway County Courthouse is significant. Cases involving cruelty of a sexual nature were often under-reported or omitted from the report of cases.[8] The under-reporting of cases

involving sexual violence against slaves and the few cases involving the rape of slave women that are available in legal indexes, not surprisingly, are civil cases concerned with the recovery of damages for the loss of slave property, or criminal cases in which the enslaved and their "crimes," usually efforts to resist, defend or flee from such violations, are on trial. For example, *Humphrey v. Utz,* a case in which a slaveowner sued his overseer for the death of a slave brutally beaten by the overseer and subjected to a range of cruelties which included having his penis nailed to a bedpost, like *Missouri v. Celia,* was also omitted from the state report of cases. It similarly illuminates the regularity of sexual violence directed at the enslaved and the obscene way in which these atrocities enter the legal record as suits for damages to property or criminal charges made against the enslaved.

As *Missouri v. Celia* demonstrated, the enslaved could neither give nor refuse consent, nor offer reasonable resistance, yet they were criminally responsible and liable. The slave was recognized as a reasoning subject, who possessed intent and rationality, solely in the context of criminal liability; ironically the slave's will was acknowledged only as it was prohibited or punished. It was generally the slave's crimes that were on trial, not white offense and violation which were enshrined as legitimate and thereby licensed, nor obviously the violence of the law, which in the effort to shift the locus of culpability is conceptualized here in terms of the crimes of the state.[9] In positing the black as criminal, the state constituted itself as the embodiment of the law, thereby obfuscating its instrumental role in terror, by projecting all culpability and wrongdoing onto the enslaved. The black body was simply the site on which the "crimes" of the dominant class and of the state were externalized in the form of a threat. The criminality imputed to blacks disavowed white violence as a necessary response to the threatening agency of blackness.

I employ the terms *white* culpability and *white* offense because the absolute submission mandated by law was not simply that of slave to his or her owner, but the submission of the enslaved before all whites.

The assignation of right and blame, privilege and punishment were central elements in the construction of racial difference and the absolute distinctions of status between free white persons and black captives. As the case of *State v. Tackett* made clear "the relation between a white man and a slave differs from that, which subsists between free persons." In this case, the Supreme Court of North Carolina reversed a lower court ruling which convicted a non-slaveowning white for the murder of a slave. (The sexual arrangements of slavery, the sexual domination of enslaved and the violation of the "conjugal" relations of the captive community, however tentative and dubiously appropriate terms like husband and wife are in this context, incited the confrontation between Daniel, the murdered slave and Tackett; however, this matter was treated as an incidental. Daniel had accused Tackett of "keeping his wife" Lotty and had threatened to kill him if he did not leave his wife alone.) The court held that common law standards of provocation and mitigation were not applicable to the relation between a white man and a slave: "The homicide of a slave may be extenuated by acts, which would not produce a legal provocation if done by a white person" (*State v. Tackett,* 1 Hawks 210, December 1820). The extenuating circumstances included

arrogance, insult, trespass, or troublesome deportment. Acts of homicide, battery and mayhem were sanctioned, if deemed essential to proper relations of free white persons and black captives and the maintenance of black submission.[10]

White culpability was displaced as black criminality, and violence legitimated as the ruling principle of the social relations of racial slavery, just as Newsome's constant violations were eclipsed by the criminal agency of Celia. *Missouri v. Celia* illustrates how difficult it is to uncover and articulate the sexual violation of enslaved women, exactly because the crime surfaces obliquely and only as the captive confesses her guilt. Ultimately, the motive for Celia's act was deemed inadmissible, and her voice usurped and negated: for her white inquisitors spoke for her during the trial. As neither slaves nor free blacks were allowed to testify against whites, the "crime" which precipitated the murder of Newsome was denied.

To assert that Celia was raped is to issue a provocation. It is a declaration intended to shift our attention to another locus of crime. It is to envision the unimaginable, excavate the repressed, and discern the illegible. It is to reveal sentiment and protection as the guise of violence in the legal construction of the captive person, and, in particular, the slippage of desire and domination in the loosely constructed term "sexual intercourse." In the trial record, the "sexuality" of Celia was ensnared in the web of others' demands, and the trace of what I risk calling her "desire," only discernible in the compliance and defiance of these competing claims.[11] As the trial record stated, Newsome had been having "sexual intercourse" with Celia, he "forced her" on the day he purchased her, and lastly George, Celia's enslaved companion, "would have nothing to do with her if she did not *quit* the old man." Coercion, desire, submission, and complicity are the circulating terms which come to characterize, less the sexuality *of* Celia or the enslaved female, than the way in which she is inhabited by sexuality and her body possessed.[12] For the captive embodies the vested rights of others.

The abjection of the captive body exceeds that which can be conveyed by the designation or difference between "slave" women and "free" women. In this case, what is at issue is the difference between the deployment of sexuality in the contexts of white kinship—the proprietorial relation of the patriarch to his wife and children, the making of legitimate heirs, and the transmission of property—and black captivity—the reproduction of property, the relations of mastery and subjection, and the regularity of sexual violences, rather than the imputed protection and privilege of white women, as the en-gendering of race and sexuality occurs within these different economies of constraint and by way of divergent methods of control and domination. Kinship and captivity designate radically different conditions of embodiment and bespeak the particular mechanisms through which bodies are racialized as well as disciplined.

The (re)production of enslavement and the legal codification of racial subordination and sexual subjection depended upon various methods of sexual control and domination: anti-miscegenation statutes, rape laws which made the rape of white women by black men a capital offense, the sanctioning of sexual violence against slave women by virtue of the law's calculation of negligible injury, the negation of kinship, and the commercial vitiation of motherhood as a means for the reproduction and

conveyance of property and black subordination.[13] *Alfred v. State,* illuminates the convergence of these varied techniques in maintaining the domination of the enslaved, and cultivating the pained and burdened personhood of the enslaved. In *Alfred v. State,* Alfred, a slave, was indicted for the murder of his overseer Coleman. A witness testified that Alfred admitted having killed the overseer: "The defendant wanted to introduce a witness on his behalf, a slave named Charlotte, who stated that she was the wife of the prisoner . . . Prisoner's counsel then proposed to prove, by Charlotte, that about nine or ten o'clock in the morning . . . (the overseer) Coleman 'had forced her to submit to sexual intercourse with him'; and that she had communicated the fact to the prisoner before the killing" (*Alfred v. State,* 37 Miss 296, October 1858). Although the defense attempted to introduce Charlotte as a witness, and thereby prove that Alfred's actions were motivated by the rape of his wife, the district attorney objected to Charlotte's testimony. The court sustained the objection, and the prisoner was convicted and sentenced to be hung.[14]

What is at issue here are the ways in which various mechanisms of sexual domination act in concert—the repression of rape, the negation of kinship, and the legal invalidation of slave marriage. In this instance, the mechanisms of sexual control are best understood as a kind of sovereign biopolitics—an absolute power with the right to take life, and to control and manage the forms of life.[15] Charlotte's testimony was rejected because her relation to Alfred had no legal status, and thus it could not provide an alibi or motive for Alfred's action. The disallowance of the marital relation, in turn, rendered superfluous Charlotte's sexual violation.[16] In the rejection of Charlotte as witness, her status as wife and partner of Alfred was negated, her rape displaced as adultery and then dismissed, and the violence that catalyzed the overseer's murder repressed.

The defense's argument focused on the violation of Alfred's rights as a "husband" rather than the rape of Charlotte. It is significant that the rape of Charlotte is interpreted narrowly within the frame of "outrages of conjugal affections," and as adultery. Alfred's counsel unsuccessfully argued that "the humanity of our law . . . regards with as much tenderness the excesses of outraged conjugal affections in the negro as in the white man. The servile condition . . . has not deprived him of his social or moral instincts, and he is as much entitled to the protection of the laws, when acting under their influence, as if he were freed." The discussion of a husband's conjugal rights, even a slave husband, supplants the rape of Charlotte.[17] In all likelihood, the court denied Alfred the right to vindicate this outrage because the decedent was white. However, in cases of this nature involving other slaves, the court sometimes recognized the husband's exclusive sexual rights in his wife and "the sudden fury excited by finding a man in the very act of shame with his wife" (*Keith v. State,* 45 Tenn [5 Cold.] 35, 1867). Ultimately, the motive for Alfred's act was deemed irrelevant because of the need to maintain black subordination and the presumably negligible status of the injury.

Alfred v. State illuminates the legal mechanisms by which sexuality and subordination are yoked in securing the social relations of slavery. On the one hand, the management of slave sexuality indifferently translates the rape of slave women simply as adultery or sexual intercourse; on the other, it refuses to recognize or grant

any legitimacy to relations forged among the enslaved. The rape of black women exists as an unspoken but normative condition fully within the purview of everyday sexual practices, whether within the implied arrangements of the slave enclave or the plantation household. This is evidenced in myriad ways, from the inattention to the commonplace evasion and indirection of polite discourse, which euphemized rape as ravishment or sex as carnal knowledge, to the utter omission and repression of the crime in slave statute and case law. In this case, the normativity of rape is to be derived from the violence of the law—the identity or coincidence of legitimate uses of slave property and, what Spillers terms, "high crimes against the flesh." The normativity of sexual violence underlines the inextricable link between racial formation and sexual subjection. As well, the virtual absence of prohibitions or limitations in the determination of socially tolerable and necessary violence sets the stage for the indiscriminate use of the body for pleasure, profit, and punishment.

The legal transposition of rape as sexual intercourse affirms the quotidian character of violence and shrouds this condition of violent domination with the suggestion of complicity. Sexual intercourse, regardless whether coerced or consensual, comes to describe the arrangements, however violent, between men and enslaved women.[18] What does sexuality designate when rape is a normative mode of its deployment? What set of effects does it produce? How can violence be differentiated from sexuality when "consent" is intelligible only as submission? How can we discern the crime when it is a legitimate use of property? Or when the black captive is made the originary locus of liability?[19] Does the regularity of violation transform it into an arrangement or a liaison from which the captive female can extract herself, if she chooses, as a lover's request or adultery would seem to imply? Can she use or wield sexuality as weapon of the weak? Do four years and two children later imply submission, resignation, complicity, desire or the extremity of constraint (McLaurin 121)?

It is this slippage which Celia's act brings to a standstill through the intervention of her will or what inadequately approximates desire. To speak of will or desire broaches a host of issues which revolve upon the terms, dimensions, and conditions of action. Moreover, the term will is an overextended proximation of the agency of the dispossessed subject/object of property or perhaps simply unrecognizable in a context in which agency and intentionality are inseparable from the threat of punishment. It is possible to read this act as liberating the captive body, however transient this liberation, or as a decisive shift in embodiment, a movement from Newsome's Celia to Celia's body, though my intention is merely to underscore its complexity. The full dimensions of this act and the resignation, courage, or glimpse of possibility that might have fueled it defy comprehensive analysis, since we only have access to Celia's life as it has been recorded by her interrogators and rendered as crime. The fateful negotiation of autonomy at the site of the expended and exploited body affirms both the impossibility of consent and the struggle to mitigate the brutal constraints of captivity through an entitlement denied the captive—no, the prerogative of refusal. Ultimately, Celia was hung for this refusal. This effort to claim the body and to possibly experience embodiment as full, inviolate, and pleasurable, not as an extension of another's will or right, nor as a condition of expenditure or defilement, led Celia to construct a boundary at the threshold of her cabin which would shield her

from the tacit violence seen as "befitting" the relation of slaveowner and enslaved female. For, as Leon Higginbotham notes, the Missouri court in pronouncing Celia's guilt "held that the end of the slavery system is not merely 'the [economic] profit of the master' but also the *joy* of the master in the sexual conquest of the slave" (Higginbotham 694). Celia's declaration of the limit was thus an emancipatory articulation of the desire for a different economy of enjoyment.

II

The effacement of rape in the context of enslavement concerns matters of necessary and tolerable violence, the full enjoyment of the slave as thing, and the form of captive embodiment. The eliding of rape must also be considered in relation to what is callously termed the "recognition of slave humanity" and the particular mechanisms of tyrannical power that converge on the black body. In this instance, tyranny is not a rhetorical inflation, but a designation of the absoluteness of power. Sexuality, if at all appropriate in this scenario, must be understood as indissociable from violence, since rape is figured as mutual and shared desire, the wanton exploitation of the captive body tacitly sanctioned as a legitimate use of property, injury disavowed, and the body and its "issue" absolute possessions to be disposed of according to the discretion of slaveowners. In short, black *and* female difference is registered by virtue of the extremity of power operating on captive bodies and licensed within the scope of the humane and the tolerable.[20]

The violence commensurate with the exercise of property rights and essential to the making of perfect submission was dissembled in regard to sexual violation by black female "excesses"—immoderate and overabundant sexuality, bestial appetites and capacities which were most often likened to the orangutan, and an untiring readiness that was only to be outstripped by her willingness.[21] Lasciviousness made unnecessary the protection of rape law, for insatiate black desire presupposed that all sexual intercourse was welcomed, if not pursued. The state's crimes of omission and proaction, the failure to extend protection and the sanctioning of violence in the name of rights of property, disappeared before the spectacle of black concupiscence. The non-existence of rape as a category of injury pointed not to the violence of the law but to the enslaved woman as a guilty accomplice and seducer. However, the omissions of law must be read symptomatically within an economy of bodies in which the full enjoyment of the slave as thing depended upon unbounded authority and the totalizing consumption of the body in its myriad capacities.[22]

The construction of black subjectivity as will-less, abject, insatiate and pained, and the instrumental deployment of sexuality in the reproduction of property, subordination, and racial difference usurped the category of rape. Sexuality formed the nexus in which black, female, and chattel were inextricably bound, and acted to intensify the constraints of chattel status by subjecting the body to another order of violations and whims.[23] The despotic ravages of power made violence indistinguishable from the full enjoyment of the thing. The tensions generated by the law's dual invocation of property and person, or by "full enjoyment" and limited protection to life and limb, were masked by the phantasmal ensnaring agency of the lascivious black.[24] Rape

disappeared through the intervention of seduction—the assertion of the slave woman's complicity and willful submission. Seduction was central to the very constitution and imagination of the antebellum South, for it provided a way of masking the antagonistic fissures of the social by pathologizing the black body and licensing barbarous forms of white enjoyment.

The discourse of seduction enabled those like Mary Boykin Chestnut, who were disgusted and enraged by the sexual arrangements of slavery, to target slave women as the agents of their husbands' downfall. The complicity of slave women displaced the act of sexual violence. According to Chestnut, decent white women were forced to live with husbands degraded by the lowliness of their enslaved "mistresses": "Under slavery, we lived surrounded by prostitutes, yet an abandoned woman is sent out of any decent house. Who thinks any worse of a Negro or mulatto woman for being a thing we can't name?" (Chestnut 21). The sexual exploitation of the enslaved female, incredulously, served as evidence of her collusion with the master class and as evidence of her power, the power both to render the master weak and, implicitly, to be the mistress of her own subjection. The slave woman not only suffered the responsibility for her sexual (ab)use, but was blameworthy because of her purported ability to render the powerful weak.

Even those like Fanny Kemble, who eloquently described the "simple horror and misery" that slave women regularly experienced, were able to callously exclaim, when confronted with the inescapable normativity of rape and the "string of detestable details" that comprised the life of the enslaved woman, as yet another woman, Sophy, shared her experience of violation: "Ah! but don't you know—did nobody ever teach any of you that it is a sin to live with men who are not your husbands?!" (Kemble 270).[25] Sophy, appropriately and vehemently responded: "Oh, yes, missis, we know—we know all about dat well enough; but we do anything to get our poor flesh some rest from the whip; when he made me follow him into de bush, what use me tell him no? he have strength to make me" (Kemble 270).

The equivocations which surround issues of consensual sexual relations under domination, the eliding of sexual violence by the imputation of the slave woman's ensnaring sexual agency or lack of virtue, and the presumption of consent as consequence of the utter powerlessness of her "no" (the "no means yes" philosophy) are important constituents of the discourse of seduction. In a more expansive or generic sense, seduction denotes a theory of power that demands the absolute and "perfect" submission of the enslaved as the guiding principle of slave relations, and yet seeks to mitigate the avowedly necessary brutality of slave relations through the shared affections of owner and captive. The doctrine of "perfect submission" reconciled violence and the claims of mutual benevolence between master and slave as necessary in maintaining the harmony of the institution. The presumed mutuality of feelings in maintaining domination enchanted the brutal and direct violence of master-slave relations. The term seduction is employed here to designate this displacement and euphemization of violence, for seduction epitomizes the discursive alchemy which shrouds direct forms of violence beneath the "veil of enchanted relations," that is, the reciprocal and mutual relations of master and slave (Bourdieu). This mining of the discourse of seduction attempts to illuminate the violence obscured by the veil

through an interrogation of the language of power and feelings, specifically the manipulations of the weak and the kind-heartedness and moral instruction of the powerful.

The benign representation of the paternal institution in slave law constituted the master-slave relationship as typified by the bonds of affection, and thereby transformed relations of violence and domination into those of affinity. This benignity depended upon a construction of the enslaved black as one easily inclined to submission, a skilled maneuverer wielding weakness masterfully, and as a potentially threatening insubordinate who could only be disciplined through violence. If what is at stake in social fantasy is the construction of a non-antagonistic, organic, and complementary society, then the ability of the South to imagine slavery as a paternal and benign institution and master-slave relations as bound by feelings depended on the specter of the obsequious and threatening slave,[26] for this manichean construction undergirded both the necessary violence and the bonds of affection set forth in slave law. As well, this fantasy enabled a vision of whiteness defined primarily by its complementary relation to blackness and by the desire to incorporate and regulate black excess. Seduction thus provided a holistic vision of social order, not divided by antagonisms, and precariously balancing barbarism and civilization, violence and protection, mutual benevolence and absolute submission, and brutality and sentiment. This harmonious vision of community was made possible by the exercise of violence, the bonds of affection, and the consonance of the weak and the powerful.

How does seduction uphold perfect submission and, at the same time, assert the alluring, if not endangering, agency of the dominated? By forwarding the strength of weakness. As a theory of power, seduction contends that there is an ostensible equality between the dominant and the dominated. The dominated acquire power based upon the identification of force and feeling. As Baudrillard writes, "seduction play(s) triumphantly with weakness" (83). The artifice of weakness not only provides seduction with its power, but defines its essential character, for the enactment of weakness and the "impenetrable obscurity" of femininity and blackness harbor a conspiracy of power (Baudrillard 83). The dominated catalyze reversals of power, not by challenges presented to the system but by succumbing to the system's logic. Thus power comes to be defined not by domination but by the manipulations of the dominated. The reversibility of power and the play of the dominated discredit the force of violence through the assertion of reciprocal and contubernal relations. In this regard, the recognition of the agency of the dominated and the power of the weak secure the fetters of subjection, while proclaiming the power and influence of those shackled and tethered.

The pro-slavery ideologue George Fitzhugh, like Baudrillard, also celebrated the reversibility of power enacted through surrender. In *Cannibals All! or, Slaves Without Masters,* Fitzhugh argued that the strength of weakness disrupts the hierarchy of power within the family, as well as the master-slave relationship. Appearances conspire to contrary purposes, thus the seemingly weak slave, like the infant or (white) woman, exercises capricious dominion: "The dependent exercise, because of their dependence, as much control over their superiors, in most things, as those superiors exercise over them. Thus and thus only, can conditions be equalized"

(Fitzhugh 204–5). Seduction appears to be a necessary labor, one required to extend and reproduce the claims of power, though advanced in the guise of the subaltern's control and disruptions: "The humble and obedient slave exercises more or less control over the most brutal and hard-hearted master. It is an invariable law of nature, that weakness and dependence are elements of strength, and generally sufficiently limit that universal despotism, observable throughout human and animal nature" (Fitzhugh 205). If, as Fitzhugh insists, the greatest slave is the master of the household, and the enslaved rule by virtue of the "strength of weakness," then, in effect, the slave is made the master of her subjection.

As Fitzhugh envisioned, kindness and affection undergirded the relations of subordination and dependency. As a model of social order, the patriarchal family depended upon duty, status, and protection, rather than consent, equality, and civil freedom. Subjection was not only naturalized but consonant with the sentimental equality of reciprocity, inasmuch as the power of affection licensed the strength of weakness. Essentially, "the strength of weakness" prevailed due to the goodness of the father, "the armor of affection and benevolence." The generosity of the father enabled the victory claimed by the slave, the tyrannical child, and the brooding wife. The bonds of affection within the slaveholding family circle permitted the tyranny of weakness, and supplanted the stranglehold of the ruling father. Ironically, the family circle remained intact as much by the bonds of affection as by the tyranny of the weak. Literally, the *forces* of affection bound the interests of the master and slave in a delicate state of equilibrium, as one form of strength modified the other. Thus, we are to believe that the exercise of control by the weak softens universal despotism, subdues the power of the father by commanding his care, and guarantees the harmony of slave relations.

Seduction erects a family romance, in this case, the elaboration of a racial and sexual fantasy in which domination is transposed into the bonds of mutual affection, subjection idealized as the pathway to equality, and perfect subordination declared the means of ensuring great happiness and harmony. The patriarchal model of social order erected by Fitzhugh marries equality and despotism through an explicit critique of consent, possessive individualism, and contractual relations. Feelings rather than contract are the necessary corrective to universal despotism, therefore duty and reciprocity rather than consent provide the basis for equality. The despotic and sovereign power celebrated by Fitzhugh could only be abated by the bonds of affection, a phrase which resonates with the ambivalence attendant to the attachments and constraints which characterize the relation of owner and object.

If a conspiracy of power resides within seduction, then questions arise as to the exact nature of this conspiracy: Who seduces whom? Does the slave become entrapped in the enchanted web of the owner's dominion, lured by promises of protection and care? Does the guile and subterfuge of the dependent mitigate the effects of power? Are the manipulations and transgressions of the dominated fated to reproduce the very order presumably challenged by such actions? Or do such enactments on the part of the owner and the enslaved, the feigned concessions of power and the stylized performance of naivete, effect any shifts or disruptions of force, or compulsively restage power and powerlessness?

III

Seduction reifies the idea of submission by proclaiming it the pathway to ostensible equality, protection, and social harmony. As expounded by pro-slavery ideologues like Fitzhugh or as a legal principle guiding master-slave relations, it professed that power and protection were acquired through surrender. The tautology reiterated: the dominated exert influence over the dominant by virtue of their weakness, and therefore more formal protections against despotism or guarantors of equality are unnecessary, if not redundant. The insinuation that the dominated were mutually invested in their subjugation recast violence in the ambiguous guise of affection, and declared hegemony rather than domination the ruling term of order.[27] The assertion that coercion *and* consent characterized the condition of enslavement can be seen in the implied and explicit promises of protection extended by the law.

The incessant reiteration of the necessity of submission—the slave must be subject to the master's will in all things, upheld it as the guiding principle of slave relations, if not the central element in the trinity of savagery, sentiment, and submission. Slave law ensured the rights of property and the absolute submission of the slave, while attending to limited forms of slave subjectivity. The law granted slaveowners virtually absolute rights and militated against the abuses of such authority by granting limited protection to slaves against "callous and cold-blooded" murder, torture and maiming, although procedural constraints, most notably the fact that a slave or free black could not act as witness against a white person, acted as safeguards against white liability and made these laws virtually impossible to enforce. In the effort to attend to the interests of master and slave, the law elaborated a theory of power in which the affection of slaveowners and the influence of the enslaved compensated for its failures and omissions. It contended that affection and influence bridged the shortcomings of law concerning the protection of black life. The ethic of perfect submission recognized the unlimited dominion of the slaveowner, yet bounded this dominion by invoking the centrality of affections in regulating the asymmetries of power in the master-slave relation.[28] The dual existence of the slave as property and person, and the interests and absolute dominion of the slaveowner were to be maintained in precarious balance by forwarding the role of affection in mitigating brutality.

The case of *State v. Mann*, although it doesn't specifically involve issues of sexuality or rape, is important in considering the place of affection, violence, and surrender in the law. Mann was indicted for assault and battery upon Lydia, the slave of Elizabeth Jones, whom he had hired for a year: "During the term, the slave had committed some small offence, for which the Defendant undertook to chastise her—that while in the act of so doing, the slave ran off, whereupon the Defendant called upon her to stop, which being refused, he shot and wounded her" (*State v. Mann*, 2 Devereaux, December 1829). The lower court convicted Mann, finding him guilty of "cruel and unwarrantable punishment, and disproportionate to the offense committed by the slave." However, in an appeal to the North Carolina Supreme Court, the decision was reversed. While the liability of the hirer, Mann, to the owner for an injury presumably impairing the value of slave property was left to general rules of bailment, the charges

of criminal battery were overturned. Even if the injury diminished the value of slave property, it was not indictable as cruel and unreasonable battery. The court held that the power of the master was absolute and not a subject for discussion (267).

The higher court ruling held that the master had absolute power to render the submission of the slave perfect; yet it was also argued that the harshness of such a principle would be regulated, not by existing legislation, but by feelings—the benevolence and affection between master and slave and the ruling moral code. In other words, the court considered affection to be an internal regulating principle of slave relations. The Supreme Court reversed the decision of the lower court on the following grounds: the power of the master had to be absolute in order "to render the submission of the slave perfect"; although "as a principle of moral right, every person in his retirement must repudiate it. But in the actual condition of things it must be so." Yet, the harshness implied by this difficult yet unavoidable decision would be regulated by "the protection already afforded by several statutes (which made it illegal to murder slaves in cold blood), . . . the private interest of the owner, *the benevolence toward each other, seated in the hearts of those who have been born and bred together*, [and] the . . . deep execrations of the community upon the barbarian, who is guilty of excessive cruelty to his unprotected slave" (emphasis mine).

Although the court acknowledged that the scope of such absolute rights of property left the enslaved open to violent abuses, it also recognized that the right to abuse had to be guaranteed for the perpetuation of the institution since the amorphous "public good" mandated the absolute subordination of the enslaved. The opinion amended this brutal admission with the assurance that the rights of ownership generally precluded such abuses because of self-interest, i.e., pecuniary considerations. The rights of ownership permitted any and all means necessary to render perfect submission; however, it was hoped that the use of excessive force was yet unnecessary because of the reciprocal benevolence of master-slave relations.

Rather than distinguish between implied relations and absolute dominance, or separate affection from violence, the court considered them both essential to the maintenance and longevity of the institution. In short, the ethic of submission indiscriminately included absolute power and human feelings. The court admitted that the obedience of the slave was "the consequence only of uncontrolled authority over the body." How else could perpetual labor and submission be guaranteed? The services of one "doomed in his person and his posterity" and "without knowledge or the capacity to make anything his own, and to toil that another may reap the fruits" could be expected only of "one who has no will of his own" and "who surrenders his will in perfect obedience to that of another" (266). To be sure, the power of the master had to be absolute to produce this surrender of the will.

Not only was perfect submission an ordering principle of the social, to be accomplished by whatever violent means necessary, regardless how brutal, but this conceptualization of power relations depended upon feelings, not law, to guarantee basic protections to the enslaved. Submission encompassed not only the acquisition of power, but explicitly addressed the power of affection in influencing relations between master and slave, although the court distinguished between slavery and the domestic relations of parent and child, tutor and pupil, and master and servant to

which it was frequently compared. The centrality ascribed to the role of feelings implicitly acknowledged the unrestricted violence the Mann opinion had licensed, yet minimized the consequences of this through an appeal to "moral right" rather than the actual condition of things. Feelings were to balance the use and role of force. As Judge Ruffin stated: "I must freely confess my sense of the harshness of this proposition; I feel it as deeply as any man can; and as a principle of moral right every person in his retirement must repudiate it. But in the actual condition of things it must be so."

The importance attributed to the intimacies of domination illustrate the role of seduction in the law. As the opinion clearly stated, power resided not only in the title to slave property but in the bonds of affection. Feelings repudiated and corrected the violence legitimated by law. Material interests and mutual benevolence would "mitigat(e) the rigors of servitude and ameliorat(e) the condition of the slave," and protect the slave from the ravages of abuse unleashed by the ruling. In other words, the brutal dominion guaranteed by the law was to be regulated by the influence of the enslaved—their pull on the heartstrings of the master. Slave law contradictorily asserted that absolute dominion was both necessary and voluntary. The intimacy of the master and the slave purportedly operated as an internal regulator of power and ameliorated the terror inherent to

> unlimited dominion. The wedding of intimacy and violent domination as regulatory norms exemplifies the logic through which violence is displaced as mutual and reciprocal desire.

The significance attributed to feelings, attachment, and the familiarity of domestic slavery rendered domination in a heart-warming light. The power of influence invested in the enslaved—the power of the weak to sway the powerful—and the place attributed to feeling in regulating the excesses of market relations refigured relations of domination and exploitation in the garb of affection, family, and reciprocal obligations. Such reasoning held that violence was both necessary and tolerable, while insisting that feelings determined the character of the master-slave relationship and informed social, familial and political organization. In short, slave relations were dependent upon and determined by "the action taking place in individual hearts" (Tompkins 128).

The contradictory appeal to the public good contended that public tranquility required violence and, at the same time, served as the guarantor that this entitlement to virtually unlimited power need never be exercised. The invocation of the public good authorized necessary violence and established minimal standards for the recognition of slave humanity. Just as the appeal to the public good mandated absolute submission, it also required that certain provisions or protections be granted to the enslaved, like housing, clothing, food, and support for elderly and infirm slaves. Yet this concern for the welfare of the enslaved and the provisions granted them should not be mistaken for rights. As a judge commented in another case which hinged on determining degrees of necessary and excessive violence, though the excessive violence "disturbed the harmony of society, was offensive to public decen-

cy, and directly tended to a breach of peace," the rights of the slave were extraneous to such considerations: "The same would be the law, if a horse had been so beaten. And yet it would not be pretended, that it was in respect to the rights of the horse, or the feelings of humanity, that this interposition would take place" (*Commonwealth v. Turner*). The public good mandated absolute submission and minimal protections intent upon maintaining harmony and security. Even when the entreaty made in the name of the public good acted minimally on behalf of the enslaved, it did so, not surprisingly, by granting these limited entitlements in a manner which "recognized" black humanity in accordance with minimal standards of existence. This truncated construction of the slave as person, rather than lessening the constraints of chattel status, enhanced them by making personhood coterminous with injury.

Although the public good putatively served as the arbiter of care and coercion, the precarious status of the slave within this sphere raises questions about the meaning of slave person, the protections advanced on her or his behalf, and the limited concerns of public decency. Contrary to pronouncements that sentiment would abate brutality, feelings intensified the violence of law and posed dire consequences for the calculation of black humanity, for the dual existence of the slave as object of property and person required that the feelings endowed the enslaved be greatly circumscribed. Although the slave was recognized as a sentient being, the degree of sentience had to be cautiously calibrated in order to avoid intensifying the antagonisms of the social order. How could property and person be reconciled on the ground of mutual benevolence and affection? How could the dual invocation of humanity and interest be sustained?

The dual existence of the slave as person and property was generated by the slave mode of production.[29] The law attempted to resolve the contradiction between the slave as property and as person/laborer, or, at the very least, to minimize this tension, by attending to the slave as both a form of property and a person. This effort was instrumental in maintaining the dominance of the slaveowning class, particularly in a period of national crisis concerning the institution. The increasing recognition of slave person in the period 1830–1860 was an effort to combat the abolitionist polemic about the degradations of chattel status and the slave's lack of rights. In any case, the dual invocation of slave law was neither a matter of an essential ethical contradiction nor a conflict between bourgeois and slave relations, but an expression of the multivalence of subjection. The dual invocation quite easily accommodated the restricted recognition of slave person and the violence necessary to the accumulation of profit and the management of a captive population, for the figuration of the humane in slave law was totally consonant with the domination of the enslaved. The constitution of the slave as person was not at odds with the structural demands of the system, nor did it necessarily challenge the social relations of the antebellum world.

Rather, the dual invocation of law designated the limits of rights of ownership, and extended and constricted these rights as was necessary for the preservation of the institution. On one hand, there was increased liability for white violence committed against slaves; and, on the other, the law continued to decriminalize the violence thought necessary to the preservation of the institution and the submission and obedience of the slave. If anything, the dual invocation of law generated the prohibi-

tions and interdictions designed to regulate the violent excesses of slavery, and at the same time extended this violence in the garb of sentiment. The recognition of the slave as subject and the figuration of the captive person in law served to explicate the meaning of dominion. To be subject in this manner was no less brutalizing than being an object of property.

In the arena of affect, the body was no less vulnerable to the demands and the excesses of power. For the bestowal which granted the slave a circumscribed and fragmented identity as person in turn shrouded the violence of such a beneficent and humane gesture. Bluntly stated, the violence of subjection concealed and extended itself through the outstretched hand of legislated concern. For the slave was considered subject only in so far as he or she was criminal(ized), wounded body or mortified flesh. This construction of the subject seems rather at odds with a proclaimed concern for the "total person." However, it does not mean that the efforts to regulate the abuses of slavery were any less "genuine," but that in the very efforts to protect the enslaved from the ravages of the institution, a mutilation of another order was set in motion. Protection was an exemplary dissimulation, for it savagely truncated the dimensions of existence, inasmuch as the effort to safeguard slave life recognized the slave as subject only as she violated the law, or was violated (wounded flesh or pained body). Thus rendered, person signified little more than a pained body or a body in need of punishment.[30]

The designation of person was inescapably bound to violence and the effort to protect embodied a degree of violence no less severe than the excesses being regulated. Despite the law's proclaimed concern for slave life or recognition of black humanity, minimal standards of existence determined personhood, *for the recognition of the slave as person depended upon the calculation of interest and injury.* The law constituted the subject as a muted, pained body or as a body to be punished; this agonized embodiment of subjectivity certainly intensified the dreadful objectification of chattel status. Paradoxically, this designation of subjectivity utterly negated the possibility of a non-punitive, inviolate or pleasurable embodiment, and instead the black captive vanished in the chasm between object, criminal, pained body, and mortified flesh.[31] The law's exposition of sentiment culminated in a violent shuttling of the subject between varied conditions of harm, juggled between the plantation and the state, and dispersed across categories of property, injury, and punishment.

IV

In *Inquiry into the Law of Negro Slavery,* Thomas Cobb explicated the conditions in which the dominion of the master and the person of the slave were to be accommodated in the law. In examining the dual character of the slave, as person and property, and the particular dimensions of personhood in common law and slave statute, Cobb contended that the slave was recognized first as person and second as property, largely because in all slaveholding states "the homicide of a slave is held to be murder, and in most of them, has been so expressly declared by law"; and even when not

expressly declared by law, the principles of Christian enlightenment extend protection to life and limb (Cobb 84). Notwithstanding, he argued that slaves were not proper subjects of common law and proposed a minimal definition of protection of life and limb.

The calculation of slave existence was determined by base conditions necessary for functioning as an effective laborer, and the extent of protection to life and limb decided by diminutions in the value of capital. Within these boundaries, degrees of injury and magnitudes of labor decided the meaning of slave person. It is difficult to acknowledge this savage quantification of life and person as a recognition of black humanity, for, as argued earlier, this restricted stipulation of humanity intensified the pained existence of the enslaved. This scale of subjective value was a complement rather than a corrective to the decriminalization of white violence. Ironically, the recognition of slave person tacitly and covertly licensed the decriminalization of white violence. Despite the fact that the recognition of slave humanity was intended to establish criminal liability for acts of violence committed upon slaves, in the end it relied upon diminutions in the value of property in determining and recognizing injury. In other words, the "corrective" resembled the ailment to the degree that the recognition of slave humanity reinscribed black life as the owner's property. For the scale of subjective value was inescapably bound to the use and value of property. The consequence of this construction of person intensified injury in the very name of redress. Moreover, the selective inclusion of the slave into the web of rights and duties that comprised the common law demonstrated the tentativeness of this recognition of personhood.

Not surprisingly, Cobb's calibrations of injury severely circumscribed the dimensions of personhood in its dismissal of sexual violence as an "offense not affecting the existence of the slave" (Cobb 90). This simultaneously made the body prey to sexual violence and disavowed both the violence and the injury. The ravished body, unlike a broken arm or other site of injury, did not bestow any increment of subjectivity because it did not decrease productivity or diminish value—on the contrary, it might actually increase the female captive's magnitude of value—nor did it apparently offend the principles of Christian enlightenment. It was declared to be inconsequential in the calculation of slave subjectivity, and not within the rights and protections granted the enslaved:

> If the general provision of the law against murder should be held to include slaves, why not all other penal enactments, by the same course of reasoning, be held to include similar offences when committed on slaves, without their being specifically named? . . . The law by recognizing the existence of the slave as person, thereby confers no rights or privileges except such as are necessary to protect that existence. All other rights should be granted specially. Hence, the penalties for rape would not and should not, by such implication, be made to extend to carnal forcible knowledge of a slave, that offense *not affecting the existence* of the slave, and that existence being the extent of the right which the implication of the law grants. (Cobb 83)

Cobb, concerned with this lapse in slave law, the neglect of sexual injury and the failure to protect slave women from rape, stated that "although worthy of consideration by legislators," it need not cause undue concern because "the occurrence of such an offense is almost unheard of; and the known lasciviousness of the negro, renders the possibility of its occurrence very remote" (Cobb 99). As the black male's nature made "rape too often an occurrence," the black female's imputed lasciviousness removed it entirely from consideration. It is not simply fortuitous that gender emerges in relation to violence; that is, gender is constituted in terms of negligible and unredressed injury and the propensity for violence. The en-gendering of race, as it is refracted through Cobb's scale of subjective value, entails the denial of sexual violation as a form of injury, while asserting the prevalence of sexual violence due to the rapacity of the negro. While Cobb's consideration of sexual violation initially posits gender differences within the enslaved community in the heteronormative terms of female victim and male perpetrator, ultimately the "strong passions" of the negro, in this instance, lust and lasciviousness, ultimately annul such distinctions and concomitantly any concerns about "the violation of the person of a female slave." Endowed less with sexuality than criminality, blacks were in need of discipline and punishment rather than protection, since as sexual subjects they were beyond the pale of the law and outside the boundaries of the decent and the nameble.

In *George v. State*, George, a slave, was indicted for rape under a statute making it a crime to have sex with a child under ten years of age. The Mississippi Supreme Court overturned a lower court ruling which convicted George for the rape of a female slave under ten years old and sentenced him to be hung. The attorney for George cited Cobb's *Law of Slavery* in his argument before the court. He argued that

> the crime of rape does not exist in this State between African slaves. Our laws recognize no marital rights as between slaves; their sexual intercourse is left to be regulated by their owners. The regulations of law, as to the white race, on the subject of sexual intercourse, do not and cannot, for obvious reasons, apply to slaves; their intercourse is promiscuous, and the violation of a female slave by a male slave would be mere assault and battery. (*George (a slave) v. State*, 37 Miss. 317, October 1859)

According to George's attorney, the sexual arrangements of the captive community were so different from those of the dominant order that they were beyond the reach of the law and best left to the regulation of slaveowners. The Mississippi Supreme Court concluded that based on a "careful examination of our legislation on this subject, we are satisfied that there is no act which embraces either the attempted or actual commission of a rape by a slave on a female slave . . . Masters and slaves cannot be governed by the same common system of laws: so different are their positions, rights, and duties." The lower court's judgment was reversed, the indictment quashed, and the defendant discharged on the grounds that "this indictment cannot be sustained, either at common law or under our statutes. It charges no offence known to either system." The opinion held that slaves were not subject to the protection of

common law, and that earlier cases in which whites were prosecuted for the murder of slaves under common law were founded on "unmeaning twaddle . . . 'natural law,' 'civilization and Christian enlightenment,' in amending propio vigore, the rigor of the common law."

If subjectivity is calculated in accordance with degrees of injury, and sexual violation is not within the scope of offenses affecting slave existence, what are the consequences of this repression and disavowal in regard to gender and sexuality? Does this callous circumscription of black sentience define the condition of the slave female or does it radically challenge the adequacy of gender as a way of making sense of the inscription and exploitation of captive bodies? Does the enslaved female as a consequence of this disavowal of offense thereby occupy a particularly circumscribed scope of existence or personhood? Does she exist exclusively as property? Is she insensate?

The "too common occurence of offense" and an "offence not effecting existence" differentiated what Cobb described as the strongest passion of negroes—lust—into gendered categories of ubiquitous criminality and negligible injury (40). Such designations illuminate the concerted processes of racialization, accumulation, engenderment, domination, and sexual subjection. Here it is not my intention to reproduce a heteronormative view of sexual violence as only and always directed at women or to discount the "great pleasure in whipping a slave" experienced by owners and overseers or eliminate acts of castration and genital mutilation from the scope of sexual violence, but rather to consider the terms in which gender, in particular the category of "woman," becomes meaningful in a context in which subjectivity is tantamount to injury. The disavowal of sexual violence is specific not only to female engenderment but to the condition of enslavement in general. In cases like *Humphrey v. Utz* and *Worley v. State,* what was being decided was whether acts of genital mutilation and castration (legally defined as acts of mayhem) were crimes when perpetrated against the enslaved and not simply whether a crime had been committed. Obviously, the quotidian terror of the antebellum world made difficult the discernments of socially tolerable vs. criminal violence. How does one identify "cruel" treatment in a context in which routine acts of barbarism are considered not only reasonable but necessary.

To return to the central issue, the law's selective recognition of slave person in regard to issues of injury and protection failed to acknowledge the matter of sexual violation, specifically rape, and thereby defined the identity of the slave female by the negation of sentience, an invulnerability to sexual violation, and the negligibility of her injuries. However, it is important that the decriminalization of rape not be understood as dispossessing the enslaved of female gender but in terms of the differential production of gendered identity. What is at stake here is not maintaining gender as an identitarian category but rather examining gender formation in relation to property relations, the sexual economy of slavery, and the calculation of injury.

The disregard of sexual injury does not dispossess slave women of gender; rather it is an index of ultimate and extreme possession. In this case, possession occurs, not via the protections of the patriarchal family and its control of female sexuality, but via absolute rights of property. What is precariously designated "woman" in the context

of captivity is not to be explicated in terms of domesticity or protection, but in terms of the disavowed violence of the paternalist injunction of slave law—the sanctity of property and the necessity of absolute submission. In this context, the instrumental deployment of sexuality operated in disregard of white regulatory norms like chastity and marriage. Within this economy, the conveyance of property did not require legitimate issue, as it did within the confines of the patriarchal family. This was evidenced by the courts description of slave children as neither illegitimate nor bastards, but as simply "not legitimate."[32]

It is necessary to belabor the issue because too often it has been argued that the enslaved female exists outside of the gendered universe because she was not privy to the entitlements of bourgeois women within the white patriarchal family. As a consequence, gender becomes a descriptive for the social and sexual arrangements of the dominant order rather than an analytic category. As well, it enchants the discourse of protection and mystifies its instrumental role in the control and disciplining of body, and, more importantly, maintains the white normativity of the category "woman." What I am attempting to explore here is the divergent production of the category woman, rather than a comparison of black and white women which implicitly or inadvertently assumes that gender is relevant only to the degree that generalizable and universal criteria define a common identity. Can we employ the term woman and yet remain vigilant that "all women do not have the same gender" (Brown 39)? Or "name as 'woman' that disenfranchised woman whom we strictly, historically, geopolitically *cannot imagine* as a literal referent," rather than reproduce the very normativity which has occluded an understanding of the differential production of gender? Nor should we assume that woman designates a known referent, an *a priori* unity, a precise bundle of easily recognizable characteristics, traits, and dispositions, and thereby fail to attend to the contingent and disjunctive production of the category. In short, woman must be disassociated from the white middle class female subject who norms the category.

In light of these remarks, what does the name woman designate within Cobb's restricted scope of subjective value? Does it merely mark the disavowed violence and pained condition of enslavement or make palpable the negligible injury? Does the condition of the enslaved female suggest an obtuseness to pain and injury? By interrogating gender within the purview of "offenses to existence" and examining female subject-formation at the site of sexual violence, I am not positing that forced sex constitutes *the* meaning of gender, but that the erasure or disavowal of sexual violence engendered black femaleness as a condition of unredressed injury, which only intensified the bonds of captivity and the deadening objectification of chattel status.[33] Unlike the admittedly indispensable and requisite violence of *State v. Mann,* or the protections extended to other forms of injury, and the criminalization of particular acts of violence—homicide, mayhem, and battery—rape was unredressed and disavowed. Ironically, the intervention of affection and the calculation of black sentience intensified the violence legitimated within the scope of the law, and the effort to regulate violence simply underscored the categories of unredressed injury. In the very effort to recognize the slave as person, blackness was reinscribed as the

pained and punitive embodiment of captivity, and black humanity constituted as a state of injury and punishment.

NOTES

1. *State of Missouri versus Celia, a Slave,* File 4496, Callaway County Court, October Term, 1855. Callaway County Courthouse, Fulton, Missouri. All quotes are from the case record; however, Melton McClaurin's *Celia, a Slave* brought the case to my attention.
2. See *Cato (a Slave) v. State,* 9 Fla. 163, 182 (1860).
3. Slave law encompasses both the slave statutes of the South and precedents established in case law. I do not intend to suggest that this is a unified body of material or that there are not differences, inconsistencies and contradictions across jurisdictions. However, I am concerned with the exemplary and characteristic features of slave law as they affect the construction of black subjectivity, sexual violence, and other categories of injury.
4. In accordance with the common law definition of the rape, the raped woman must, in effect, prove she was raped by giving evidence of "reasonable resistance."
5. The role of seduction in rape cases has previously been examined along the lines of "no means yes" by Susan Estrich and Catherine MacKinnon. See Susan Estrich's "Rape" and Catherine A. MacKinnon's "Feminism, Marxism, Method and the State." My emphasis is different here. It is not simply a matter of a woman's "no" not being taking seriously or of unveiling the crime when "it looks like sex." What is at issue here is the denial and restricted recognition of will or submission because of the legal construction of black subjectivity and the utter negation of the crime. As well, by exploring rape and sexual domination in the frame of seduction, I risk being accused of conflating the two or of effacing the violence of rape through such framing. I share the reasonable discomfort with the juxtaposition of rape and seduction because it shifts the focus from violence to women's culpability or complicity; however, this is exactly what is at stake in this exploration—the ways in which the captive is made responsible for her undoing and the black body made the originary locus of its violation.
6. This presumption of consent is also crucially related to the pathologizing of the black body as a site of sexual excess, torpidity and sloth. See Winthrop Jordan's *White Over Black: American Attitudes Toward the Negro, 1550–1812.*
7. I am working with legal definitions of rape to demonstrate that the sexual violation of enslaved women was not encompassed by the law. It is not only that they are not protected by the common law or slave statute, but that the extremity of socially tolerable violence throws into crisis notions of force and will. Thus, the violence and domination they are commonly subjected to falls outside of the legal constituents of rape as a consequence of the sheer extremity of violence which is normative in their case. See Sue Bessmer's *The Laws of Rape,* Susan M. Edwards' *Female Sexuality and the Law,* Zillah Eisenstein's *The Female Body and the Law* (42–116), Susan Estrich's *Real Rape,* Carol Smart's *Feminism and the Power of Law* (26–49), and Rosemarie Tong's *Women, Sex, and the Law.*
8. Judith Schafer's work on the antebellum Supreme Court of Louisiana documents this. See *Slavery, the Civil Law, and the Supreme Court of Louisiana* (Baton Rouge: Louisiana State University Press, forthcoming). One case that she has unearthed, *Humphreys v. Utz,* involved an owner's suit against an overseer for the death of a slave who was brutally beaten and suffered cruelties which included having his penis nailed to a bedstead.
9. Crime isn't employed here in accordance with traditional legal usage, but as a way of challenging and interrogating the logic of property, the use of chattel persons, and the contradictions of slave law. For a discussion of state crime see Gregg Barak's *Crimes by the Capitalist State* and Alexander George's *Western State Terrorism.*
10. There were criminal sanctions against homicide and violent assaults on slaves. However, extreme and torturous violence was legitimated if exercised in order to secure submission. See Ex Parte Bolyston, *State v. Mann, Oliver v. State.* As well, the procedural discrimination which prohibited blacks from testifying against whites made these statutes ineffective if not meaningless. Cases in which owners were prosecuted for murder and battery were cases involving violence that was so extreme that the "enormities" involved were "too disgusting to be particularly designated." See *State v. Hoover,* 20 N.C. 396, 4 Dev. & Bat. 504 (1839). On the

"legitimate uses" of slave property as regards sexual abuse and domination, see William Goodell's *The American Slave Code* (86).

11. I use that term cautiously in light of Hortense Spillers' admonition about how "dubiously appropriate" sexuality is as a term of "implied relationship and desire in the context of enslavement." See "Mama's Baby, Papa's Maybe: An American Grammar Book."
12. See Michel Foucault's "The Deployment of Sexuality" (75–132).
13. See Edmund Morgan's *American Slavery, American Freedom.* As Margaret Burnham notes, "in contradistinction to the common law, the slaveholding states all adopted the civil rule, partus sequitur ventrem—the issue and descendants of the slaves follow the status of the mother" (215). See also Karen Getman's "Sexual Control in the Slaveholding South: The Implementation and Maintenance of a Racial Caste System."
14. *Alfred v. State,* 37 Miss 296. The case was appealed in an appellate court on grounds concerning the county of juror selection, the competence of a biased juror, Alfred's confession, adultery as a defense for the murder, and the exclusion of Charlotte's confession. The higher court upheld the ruling of the lower court.
15. Here I am trying to deal with the "menace to life" which characterizes sovereign power, but also with its control and management of life in the case of the enslaved population. Thus, I am arguing that the modality of power operative on the enslaved combined features of modern and pre-modern power. See Foucault's "Right of Death and Power Over Life" (133–59).
16. In *State v. Samuel,* 19 N.C. (2 Dev. & Bat.) 177 (1836), Samuel was convicted of murdering his wife's lover. On appeal of this conviction, his attorney argued that his wife's testimony against him should have been barred by the marital privilege. The court held that because "the privilege is grounded on the legal requirement of marital permanence, it ought not to be held to apply where no contract exists to require such permanence . . . Hence a marriage de facto will not, but only a marriage de jure, will exclude one of the parties from giving evidence for or against the other."
17. In her *Reconstructing Womanhood: The Emergence of the Afro-American Woman Novelist,* Hazel Carby notes that in abolitionist discourse and in slave narratives, "the victim (of sexual violence) appeared not just in her own right as a figure of oppression but was linked to a threat to, or denial of, the manhood of the male slave" (35).
18. Nor were enslaved women protected from rape and sexual violation perpetrated by enslaved men.
19. The rape of black women is registered in case law almost exclusively in contexts in which they or their husbands and lovers are being prosecuted for crimes that would otherwise be recognized as self-defense.
20. I argue that sexual violence is crucial to the construction and experience of gender for black women, unlike Elizabeth Fox-Genovese who argues that sexual violation of slave women demonstrated that they were somehow without gender or endowed with a lesser gender since their sexual violation defied the "appropriate gender conventions" of the dominant class. Fox-Genovese fails to consider that gender is not a pre-existent unity but is overdetermined by other social practices and discourses: "Violations of the (gender) norm painfully reminded slaves that they did not enjoy the full status of their gender, that they could not count on the 'protection'—however constraining and sometimes hypocritical—that surrounded white women" (193).
21. See Winthrop Jordan's *White Over Black: American Attitudes Towards the Negro 1550–1812* and Thomas Jefferson's *Notes on the State of Virginia.*
22. In *Commonwealth v. Turner,* 26 Va. 560, 5 Rand. 678 (1827) the court upheld the master's right to extreme forms of punishment. The only dissenting justice argued that a slave was entitled to protection as a person "except so far as the application of it conflicted with the enjoyment of the slave as a thing." William Goodell noted: "Another use of slave property is indicated in the advertisements of beautiful young mulatto girls for sale; and by the fact that these commonly command higher prices than the ablest male labourers, or any other description of slaves . . . Forced concubinage of slave women with their masters and overseers, constitutes another class of facts, equally undeniable . . . Such facts in their interminable varieties corroborate the preceding, and illustrate the almost innumerable uses of slave property" (86).
23. Though I am focusing on female bodies, we must not lose sight of the fact that men were also the objects of sexual violence and (ab)use. I am not arguing that female gender is essentially defined by violation, but rather I am interrogating rape within the heterosexual closures which have traditionally defined the act, the role of violence in the reproductive economy of the plantation household, and the constitution of black subjectivity, particularly the construction

of female gender, in the context of the law's calculation of personhood in accordance with degrees of injury.

24. As Slavoj Zizek writes, social fantasy "is a necessary counterpart to the concept of antagonism, a scenario filling out the voids of the social structure, masking its constitutive antagonism by the fullness of enjoyment" ("Beyond Discourse" 254).
25. Kemble, noting the inappropriateness of this response, described it as foolish and as a weary reaction to the "ineffable state of utter degradation."
26. In the North, whiteness and freedom were also defined in contradistinction to black enslavement (Zizek, *Sublime* 126).
27. Hegemony encompasses coercion and consent, as opposed to direct and simple forms of domination which rely solely on force and coercion. See Antonio Gramsci's *The Prison Notebooks.*
28. I argue that the theory of power and the ethic of submission at work in law are an aspect of 19th-century sentimental culture. For an extensive discussion of submission as an ethic of 19th-century culture, see Ann Douglas's *The Feminization of American Culture* and Jane Tompkins' *Sensational Designs: The Cultural Work of American Fiction 1790–1860.*
29. The contradiction between property and person is also generated by "two distinct economic forms . . . the form of property and the labour process," since the slave was both a "form of property (with a value in circulation) and the slave as direct producer (as the producer of value in some definite activity of labouring)" (Hindess and Hirst 129).
30. See Elaine Scarry's *The Body in Pain* for an examination of the relation between nation, body and culture (108–9).
31. The mortified flesh refers both to the "zero degree of social conceptualization" and to the condition of social death. Spillers writes: "Before the 'body' there is the 'flesh,' that zero degree of social conceptualization that does not escape concealment under the brush of discourse . . . though the European hegemonies stole bodies . . . out of West African communities in concert with African 'middlemen,' we regard this human and social irreparability as high crimes against the flesh, as the person of African females and African males registered the wounded" (67). Though I do not distinguish between the body and the flesh as liberated and captive subject positions, I contend that the negation of the subject which results from such restricted recognition reinscribes the condition of social death. See also Orlando Patterson's *Slavery and Social Death.*
32. See *Andrews v. Page,* 3 Heiskell 653, February 1871.
33. This encompasses the construction of rape as a capital offense when committed by black men, and the castration of black men as a preventive measure against such "sexual immodesty," as well as the magnification of injury through the omission of rape as an offense affecting the enslaved female's existence.

WORKS CITED

Baudrillard, Jean. *Seduction.* Tr. Brian Singer. New York: St. Martin's Press, 1979.

Bessmer, Sue. *The Laws of Rape.* Ed. Annette K. Baxter. Landmark Dissertations in Women's Studies Series. New York: Praeger Special Studies, 1976.

Bourdieu, Pierre. *Outline of a Theory of Practice.* Tr. R. Nice. Cambridge: Cambridge University Press, 1977.

Brown, Elsa Barkley. "What Has Happened Here": The Politics of Difference in Women's History and Feminist Politics." *We Specialize in the Impossible: A Reader in Black Women's History.* Eds. Darlene Clark Hine, Wilma King, and Linda Reed. Brooklyn, NY: Carlson Publishing, 1995.

Burnham, Margaret. "An Impossible Marriage: Slave Law and Family Law." *Law and Inequality* 5 (1987).

Carby, Hazel V. *Reconstructing Womanhood: The Emergence of the Afro-American Woman Novelist.* New York: Oxford University Press, 1987.

Chestnut, Mary Boykin. *A Diary from Dixie.* Ed. Ben Ames Williams. Boston: Houghton Mifflin Company, 1942.

Cobb, Thomas. *Inquiry into the Law of Negro Slavery.* Philadelphia, 1858.

Crimes by the Capitalist State. Ed. Gregg Barak. New York: State University Press of New York, 1991.

Douglas, Ann. *The Feminization of American Culture.* New York: Avon Books, 1977.

Edwards, Susan M. *Female Sexuality and the Law.* Oxford: Oxford University Press, 1981.

Eisenstein, Zillah. *The Female Body and the Law.* California: University of California Press, 1988.

Estrich, Susan. "Rape." *Yale Law Journal* 95.6 (1986): 1087–1184.
——. *Real Rape.* Cambridge: Harvard University Press, 1987.
Fitzhugh, George. *Cannibals All! or Slaves Without Masters.* Cambridge: The Belknap Press of Harvard University, 1971.
Forrester, John. *The Seduction of Psychoanalysis.* Cambridge: Cambridge University Press, 1990.
Foucault, Michel. *History of Sexuality.* Tr. Mark Hurley. New York: Vintage Books, 1980.
Fox-Genovese, Elizabeth. *Within the Plantation Household: Black and White Women of the Old South.* Chapel Hill, NC: University of North Carolina Press, 1988.
Getman, Karen. "Sexual Control in the Slaveholding South: The Implementation and Maintenance of a Racial Caste System." *Harvard Women's Law Journal* 7 (1984): 115–52.
Goodell, William. *The American Slave Code.* 1853; New York: Johnson Reprint Corporation, 1968.
Gramsci, Antonio. *The Prison Notebooks.* Ed. and Tr. Quintin Hoare and Geoffrey Nowell Smith. New York: International Publishers, 1971.
Higginbotham, A. Leon. "Race, Sex, Education and Missouri Jurisprudence: Shelley v. Kraemer in a Historical Perspective." *Washington University Law Quarterly* 67 (1989).
Hindess, Barry, and Paul Hirst. *Pre-Capitalist Modes of Production.* London: Routledge & Kegan Paul, 1975.
Jefferson, Thomas. *Notes on the State of Virginia.* London, 1787; New York: W.W. Norton & Company, 1982.
Jordan, Winthrop. *White Over Black: American Attitudes Toward the Negro, 1550–1812.* New York: W.W. Norton & Company, 1968.
Kemble, Fanny. *Journal of a Residence on a Georgia Plantation in 1838–1839.* Ed. John A. Scott. Athens, GA: The University of Georgia Press, 1984.
Pateman, Carole. *The Sexual Contract.* Stanford, CA: Stanford University Press, 1988.
Patterson, Orlando. *Slavery and Social Death.* Cambridge: Harvard University Press, 1982.
MacKinnon, Catherine A. "Feminism, Marxism, Method and the State." *Signs: Journal of Women in Culture and Society* 8.4 (Summer 1983): 635–58.
McClaurin, Melton. *Celia, A Slave.* New York: Avon Books, 1991.
Morgan, Edmund. *American Slavery, American Freedom.* New York: W.W. Norton & Company, 1979.
Scarry, Elaine. *The Body in Pain.* New York: Oxford University Press, 1985.
Smart, Carol. *Feminism and the Power of Law.* London: Routledge, 1989.
Spillers, Hortense. "Mama's Baby, Papa's Maybe: An American Grammar Book." *Diacritics* (Summer 1987): 64–81.
Spivak, Gayatri. "Feminism and Deconstruction." *Outside in the Teaching Machine.* New York: Routledge, 1993.
Tompkins, Jane. *Sensational Designs: The Cultural Work of American Fiction 1790–1860.* New York: Oxford University Press, 1985.
Tong, Rosemarie. *Women, Sex, and the Law.* Totowa, NJ: Rowman & Allanheld Publishers, 1984.
Western State Terrorism. Ed. Alexander George. New York: Routledge, 1991.
Zizek, Slavoj. "Beyond Discourse Analysis." *New Reflections on the Revolution in Our Time.* Ed. Ernesto Laclau. London: Verso, 1990.
——. *The Sublime Object of Ideology.* London: Verso, 1989.